IN THE SUPREME COURT
APPEAL FROM THE MICHIGAN COURT OF APPEALS
JUDGES RICHARD ALLEN GRIFFIN, MARK J. CAVANAGH AND KAREN FORT HOOD

FORD MOTOR COMPANY

Petitioner/Appellant,

v

BRUCE TOWNSHIP,

Respondent/Appellee.

_____/

Supreme Court No. 127424

Court of Appeals No. 246579

Michigan Tax Tribunal No. 288822

FORD MOTOR COMPANY,

Petitioner/Appellant,

v

CITY OF WOODHAVEN and COUNTY OF WAYNE,

Respondents/Appellees.

_____/

Supreme Court No. 127422

Court of Appeals No. 246378

Michigan Tax Tribunal No. 294958

FORD MOTOR COMPANY,

Petitioner/Appellant,

v

CITY OF STERLING HEIGHTS,

Respondent/Appellee

_____/

Supreme Court No. 127423

Court of Appeals No. 246379

Michigan Tax Tribunal No. 294924

AMICUS CURIAE BRIEF OF THE MICHIGAN RETAILERS ASSOCIATION

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QUESTIONS PRESENTED

Amicus Curiae, the Michigan Retailers Association, relies on the Questions Presented contained in Brief on Appeal submitted by Appellant, Ford Motor Co.

I. INTRODUCTION

The Michigan Retailers Association (the "Association") prides itself on being the unified voice of Michigan's retail industry. The Association represents more that 5,500 member retail businesses, which own and operate more than 12,000 stores across Michigan. Association members range in size from small single-store operations to large national and international chains. Virtually all of the Association's members are taxpayers under the Michigan General Property Tax Act and will be directly affected by the Court's decision in this case.

There is no dispute that Appellant, Ford Motor Company ("Ford"), has overpaid its property taxes. No party is arguing that Ford should get a "tax break" or pay less taxes than the amount lawfully owing. The only issue in this appeal is whether Ford, or any other taxpayer in similar circumstances, is entitled to recover erroneously overpaid taxes. The Legislature clearly gave a cause of action to taxpayers to recover taxes erroneously paid due to a mutual mistake of fact when it enacted MCL 211.53a ("Section 53a"). The opinions issued by the Court of Appeals below, however, essentially eviscerate Section 53a regarding any claimed mistake or error. In order to do so, the Court of Appeals ignored Section 53a's unambiguous language and instead contorted the language of that statutory provision.

It is important for the Court to realize that the severe time constraints imposed by Michigan's property taxation system make errors virtually unavoidable. While these onerous deadlines are necessary because of the requirements of the equalization process, the system nonetheless guarantees that taxpayers will at times erroneously report their property. Pursuant to MCL 211.19, taxpayers must file personal property statements by February 20, which is well before taxpayers with significant property throughout the State can finalize their property records for the year. The Assessors must then quickly complete their assessment rolls by the first Monday in March. MCL 211.24(1). Taxpayers then have a very short time to protest taxes to

the boards of review, which hear protests in early March. MCL 211.30. It is therefore not unusual for taxpayers to discover, as Ford did here, that they have made a mistake on their personal property statements well after the tax rolls are finalized.

The issue before the Court is an important issue for Michigan businesses, such as members of the Association. The Association's members will be directly adversely affected by the Court of Appeals' holdings in these cases that taxpayers who pay unlawful taxes due to a mutual mistake of fact can be deprived of the remedy the Legislature specifically provided. The Association has a vital interest in protecting the statutory remedies the Legislature has afforded its members.

II. STATEMENT OF FACTS

The Association relies on the Statement of Facts contained in Ford's Brief on Appeal.

III. STANDARD OF REVIEW

The fundamental issue in this case involves the property interpretation and construction of 53A. Such issues of statutory construction are reviewed by this Court *de novo*.[1] Mitan v Campbell, 474 Mich 21, 23; 706 NW2d 420 (2005).

[1] Although purporting to review the MTT's statutory construction *de novo*, the majority opinions below state that the Court of Appeals will "accord deference to the MTT's interpretation of a statute it is legislatively charged with enforcing, although we are not bound by that interpretation. See, e.g., Ford Motor Co v Bruce Twp, 264 Mich App 1, 7; 689 NW2d 764 (2004). Such deference is not warranted in this case for the simple reason that the MTT does not administer or enforce Section 53a. Pursuant to MCL 205.721, the MTT is a "quasi-judicial agency" that decides cases arising under Section 53a. The MTT, however, is not charged with either administering or enforcing Section 53a. According deference to the MTT's interpretation of Section 53a merely because cases involving that statute are initially brought there would be like according deference to a Circuit Court's interpretation of a murder statute merely because murder cases are initiated in Circuit Court.

IV. ARGUMENT

A. The Unambiguous Language Of Section 53a Affords Relief To A Taxpayer Who Pays Excess Taxes Because Of A Mutual Mistake Of Fact.

The unambiguous language of Section 53a provides a remedy to taxpayers who overpay taxes based on a mutual mistake of fact. Section 53a provides:

> Any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of a clerical error or mutual mistake of fact made by the assessing officer and the taxpayer may recover the excess so paid, without interest, if suit is commenced within 3 years from the date of payment, notwithstanding that the payment was not made under protest.

B. There Was A Mutual Mistake Of Fact In These Cases.

Judge Griffin's dissenting opinions below were clearly correct – both Ford and the taxing jurisdictions labored under a mutual mistake of fact that resulted in the assessment and overpayment of property taxes. Both the assessing officers and Ford believed that property reported on Ford's personal property statements was taxable, when it was not. This mistaken belief was shared by and common to the parties and, therefore, was a mutual mistake of fact. The assessors relied on this mistaken factual belief in assessing tax over and above the lawfully owing amounts and Ford relied on this mistaken factual belief in overpaying. Therefore, Judge Griffin correctly decided section 53a was applicable:

> Here both parties shared the same factual mistake. They mistakenly believed that all of the property listed on the personal property statement was taxable to petitioner, when it was not ... Both parties mutually relied on this factual mistake: respondent relied on the mistake to assess the property and enforce the tax, and petitioner relied on the mistake in paying the tax. Therefore, the parties committed a mutual mistake of fact that was intended to be remedied by the Legislature.

See, e.g., Ford Motor Co v Bruce Twp, 264 Mich App 1, 21-22; 689 NW2d 764 (2004) (Griffin dissenting).

C. The Majority Opinions Below Erroneously Grafted A "Direct Cause" Requirement To Section 53a.

The majority opinions below contorted the plain meaning of the term "mutual mistake of fact" by limiting that term to circumstances in which the parties labor under a mutual mistake due to the same "direct cause." This "direct cause" requirement is not contained in the plain language of the statute and it was error for the Court of Appeals to add this requirement. Koontz v Ameritech Services, Inc, 466 Mich 304, 312, 645 NW2d 34 (2002) ("Because the proper role of the judiciary is to interpret and not write the law, courts simply lack authority to venture beyond the unambiguous text of a statute.").

The "direct cause" requirement advanced by the Court of Appeals majority below has never been a requirement under the law of mutual mistake.[2] Indeed, many of this Court's prior decisions regarding mutual mistake of fact would be erroneous under the analysis adopted by the Court of Appeals majority below. Consider, for example, the facts of Langschwager v Pinney, 351 Mich 473; 88 NW2d 276 (1958), in which the Court affirmed the chancery court's finding of mutual mistake of fact regarding the boundary of a parcel of land. In that case, the chancery court found that "there was a stake there which the [sellers] represented to be the east end of the north line of the lot they were selling to [buyers], and that the [buyers] accepted as evidence of the line." 351 Mich at 480. The Court affirmed reformation of the deed of sale to reflect the parties' belief as to the boundary of the land sold to reflect this mutual mistake. If the Court of Appeals' majority opinions below were the law, however, the Court's holding in Langschwager would be erroneous. In that case, there would not have been a "mutual mistake" because the

[2] The doctrine of mutual mistake is invoked most often in the area of contracts. In that area of law, the "direct cause" requirement adopted by the majority opinions below is not an element of proving a mutual mistake. See, e.g., 17A Am Jur 2d, Contracts, § 202, p. 209 ("Mutual mistake results when both parties to a contract share a common assumption about a vital existing fact upon which they base their bargain and that assumption is false. . . .").

buyers relied upon the sellers' representation, which was the "direct cause" of the buyers' mistake, while the sellers did not rely upon their own representation in forming their mistaken belief as to the boundary line of the property. Therefore, under the Court of Appeals' majority opinions below, the "direct cause" of the mistake of the buyers and sellers were different and there would have been no mutual mistake of fact.

Like the assessor's reliance upon Ford's representations in this case, many "mutual mistake of fact" cases arise from reliance by one party upon the representations of another. See e.g., Britton v Parkin, 176 Mich App 395, 398-399, 438 NW2d 919 (1989) (mutual mistake of fact when seller represented that land was zoned commercial). Indeed, such a situation appears to have occurred in the Court's seminal "mutual mistake of fact" case, Sherwood v Walker, 66 Mich. 568, 33 NW 919 (1887) – the famous "barren cow" case taught to many first-year law students. In that case, the seller informed the buyer that it had cows for sale but that they were "probably barren, and would not breed." Id. at 569. A contract was entered into for the sale of a cow named "Rose 2d of Aberlone" but the seller refused to part with the cow when it was later found with calf. The Court held that if the parties believed the cow was barren at the time of contracting, there was a mutual mistake of fact that would justify rescission of the contract. Id. at 578. The Court did not hold that the parties were required to have arrived at their mutual mistake regarding the cow's fertility from the same "direct cause." Under the analysis adopted by the Court of Appeals below, there would have been no mutual mistake of fact in Sherwood if the "direct cause" of the buyer's belief was the seller's representation or any other "direct cause" different than the "direct cause"[3] of the seller's belief.

[3] In addition to making up the "direct cause" requirement out of thin air, the Court of Appeals below also failed to articulate how that requirement is to be applied. Presumably, the buyer and seller in Sherwood would not have had the same "direct cause" for their mistaken belief that the cow was barren if each had the animal inspected by a different veterinarian. It is unclear, however, what the result would be if the same veterinarian had inspected the animal but the

D. It Was Erroneous For The Court Of Appeals To Graft Extraneous Requirements To Section 53a, Especially When Section 53a Is A Remedial Statute.

Adding requirements that do not appear in the plain language of a statute is clearly erroneous because if the Legislature had wanted to insert a "direct cause" requirement into Section 53a, it would have done so. The Court of Appeals' attempt to add hurdles to Section 53a that are not contained therein is doubly erroneous because Section 53a is a remedial statute, which is supposed to be broadly interpreted to afford the remedy afforded by the Legislature.

Section 53a is a remedial statute under any definition of the term. It is a remedial statute because it was meant to remedy a deficiency in the prior law resulting from the Court's holding in Consumers Power Co v Muskegon Co, 346 Mich 243; 78 NW2d 223 (1956), and because it afforded a remedy to taxpayers when there was previously no remedy.[4]

Remedial statutes must be sufficiently liberally and broadly interpreted to ensure availability of the remedy intended to be conferred. See, e.g., Trepanier v National Amusements, Inc, 250 Mich App 578, 586; 649 NW2d 754 (2002) ("remedial statutes . . . should be liberally construed in favor of the persons intended to be benefited"); Turner v Auto Club Ins Ass'n, 448 Mich 22, 28; 528 NW2d 681 (1995). The majority opinions below violate this principle of

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buyer had relied on a written report by the veterinarian while the seller relied on an oral report. Parsed finely enough, a common belief by two individuals will never have the same "direct cause."

[4] In Rookledge v Garwood, 340 Mich. 444, 453, 65 N.W.2d 785 (1954), the Court favorably quoted 50 Am Jur, pp. 33-34, Statutes, § 15 as the "definitive rule" defining remedial legislation:

> Legislation which has been regarded as remedial in its nature includes statutes which abridge superfluities of former laws, remedying defects therein, or mischiefs thereof implying an intention to reform or extend existing rights, and having for their purpose the promotion of justice and the advancement of public welfare and of important and beneficial public objects, such as the protection of the health, morals, and safety of society, or of the public generally.

statutory construction by narrowly interpreting section 53a and thereby denying the remedy the Legislature intended to confer.

V. CONCLUSION AND REQUEST FOR RELIEF

For the reasons discussed above, and as more fully discussed in Ford's Brief on Appeal, the majority opinions below were clearly erroneous. The Association respectfully requests that the Court reverse the majority opinions of the Court of Appeals below and remand these matters to the Tribunal for further proceedings.

Respectfully submitted,
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